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OFFICE OF PETITIONS

In re Application of

Schiemann, et al.

Application No. 10/552,065

Filed: October 5, 2005

Attorney Docket No. MERCK-3074

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed April 10, 2008.

The petition is **granted**.

This application was held abandoned October 13, 2007, after no reply was received to the restriction/election requirement mailed September 12, 2007. The notice set forth a shortened period of reply of one month from its mailing date. No response was received within the allowable period and the application became abandoned on October 13, 2007. A Notice of Abandonment was mailed April 30, 2008. The instant petition was filed on April 10, 2008. Petitioner maintains that the notice of September 12, 2007, was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology 1600, GAU 1614 for further processing that may include remailing the restriction/election requirement and resetting of the period for reply.

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Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

A handwritten signature in cursive script, appearing to read "Kenya A. McLaughlin".

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions